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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *31 August 2006*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-27* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-27* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *31 August 2006* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All   b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date *1/3/2007*.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

1.   Examiner acknowledged the preliminary amendment filed on 8/31/2006, in which claims

7-13. 21-26, and the specification, page 1, have amended.

        Claims 1-27 are pending in this application.

Claim Objections

2.   The following claims are objected to for lack of antecedent basis:

        a.   "a method" in claims 2-12; it is suggested to change "a method" to "the method";

        b.   "a system" in claims 16-24, 26; it is suggested to changed "a system" to "the

system";

        c.   "the servicing step", claim 2, line 2, claim 3. lines 3-4, claim 6, line 2, claim 16,

line 2, claim 17, lines 3-4;

        d.   "the available data items", claim 2,line 4, claim 16, line 4;

        e.   "the subset", claim 2, line 4, claim 3, line 5, claim 16, line 5, lcaim 17, line 5;

        f.   "the requesting user", claim 2, line 5, claim 3, lines 5-6, claim 16, line 5, claim 17,

lines 5-6;

        g.   "the property values", claim 4, line 1. claim 5, line 1;

        h.   "the request", claim 6, line 3, claim 20, line 3;

        i.   "the set", claim 6, lines 3-4, claim 20, lines 3-4;

        j.   "the user", claim 6, line 4, claim 8, line 4, claim 9, line 4, claim 20, oine 4;

        k.   "the time", claim 7, line 2, claim 9, line 2, claim 2, line 3, claim 23, line 2;

        l.   "the times", claim 8, line 6;

m.   "the receipt", claim 9, line 2, claim 23, line 2;

n.   "the stored content item", claim 10, lin 3;

o.   "the rating user", claim 12, line 2, claim 26, line 2;

p.   "the requested", claim 21, line 4;

q.   "the difference", claim 22, line 6.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.   Claims 13-14, 25 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

The claims lack the necessary physical articles or objects to constitute a machine or a

manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to

be a process nor are they a combination of chemical compounds to be composition of matter. As

such, they fail to fall within a statutory category. They are, the best functional descriptive

material, per se.

Descriptive material can be characterized as either "functional descriptive material" or

"nonfunctional descriptive material." In this context, "functional descriptive material." both

types of "descriptive material" are nonstatutory when claimed as descriptive material per se, 33

F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some

computer-readable medium, it becomes structurally and functionally interrelated to the medium

and will be statutory in most cases since use of technology permits the function of the descriptive

material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035

(Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a

computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not

make it statutory. See Diehr, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an

algorithm in Benson were unpatentable as abstract ideas because "[t]he sole practical application

of the algorithm was in connection with the programming of a general purpose computer.").

With respect to claim 13, "a computer program" is being recited; however, it appears that

the computer program would reasonably be interpreted by one of ordinary skill in the art as

software, per se. because it fails to recite a hardware component (memory or storage medium) to

enable the function to be realized.

With respect to claim 14, "a computer program **or** any one **or** more a suit of computer

programs" is recited, however, it appears that the computer program would reasonably be

interpreted by one of ordinary skill in the art as nonfunctional descriptive material because it

embraces over or overlaps two computer programs, "a computer program **or** a suit of computer

programs". Hence, the nonfunctional descriptive material fails to fall within the statutory

category.

With respect to claim 25," a system" is recited; however, it is depending on claim 1 according to the claim dependency, and claim 1 recited "a method". Hence, claim 25 is directed to neither a "process" nor a "machine", but rather embraces over or overlaps two different statutory classes of invention set forth in 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See Ex parte Lyell, 17 USPQ2d 1548 and MPEP 2173.05 (p).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1, 15 and 27, "data items or data defining access to data items" is not clearly understood rendering claim indefinite. It is unclear whether the stored data items, recited in claim 1, line 2, claim 15, lines 3-4, claim 27, line 2, is the same as the received data items, recited in claim 1, line 4, claim 15, lines 8-9, claim 27, lines 5-6.

In addition, "those users" recited in claim 1, line 7, claim 15, line 11, claim 27, line 8, is not clearly understood rendering claim indefinite. It is unclear whether it is referred to the user that rates data, or the user that provides data, or the user that receives data.

Furthermore, "changing the respective service level data for those users from which data items or data defining access to data items were received in dependence upon received rating data relating to those received data items or data defining access to data items" recited in claim 1, lines 9-11, claim 15, lines 13-16, claim 27, lines 9-11, is not clearly understood rendering claim indefinite. It is unclear the correlation between changing the service level and the rating data, and how the change is made.

Also, with respect to claims 2, 3, 27, "wherein the servicing step comprises determining a sub-set of the data items or data defining access to data items in dependence on the respective values", recited in claim 2, lines 2-5, claim 3, lines 3-5, claim 27, lines 15-17, is not clearly understood rendering claim indefinite. It is unclear the "sub-set of the data items" and "data defining access to the data items" are determined; and how they are related to "the respective values".

With respect to claim 25, "a system" is recited; however, the claim is an hybrid claim that claims a method and system. It fails to positively recite the boundaries sought for protection. The metes and bounds of the claim can not be determined because it is unclear to which category of subject matter is sought for protection, i.e. the system or the method.

Any claim not specifically addressed, above, is being rejected as incorporating the deficiencies of a claim which it depends.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6.   Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta et al,

"A Frequent-Sharer Program for Peer-to-Peer Systems", hereinafter Gupta, in view of Rodgers

(Pub No. US2003/0005035 A1).

Gupta is cited by the Applicant in the IDS.

With respect to claim 1, Gupta discloses a data provisioning method *(frequent sharer*

program for peer to peer systems, peer to peer system associates with data provision, Page 1,

Title), comprising the steps:

storing data items or data defining access to data items for provision to users *(the account component keeps track of the contribute made for data provision to user, the contribute made associates with the data items and the data defining access to the data item, Page 1, right Col. Part II, lines 3-4)*;

maintaining, for one or more users, respective service level data usable to determine a level of service to be provided to the respective users *(maintain the level of service provide to the user, e.g. basic, enhanced, premium, Page 1, right Col. part II, lines 13-21, Fig 1 & 4)*;

receiving data items or data defining access to data items from users for provision to users *(receiving contribution from the user, the contribution association with data item associate with access, Page 2, right Col. Part III, Accounting Component, lines 5-6)*;

changing the respective service level data for those users from which data items or data defining access to data items were received in dependence upon received rating data relating to those received data items or data defining access to data items *(changing the level of service from basic to enhanced or premium based on the pointes accumulated, the points associate with rating, Page 2, right Col. Part III, Accounting Component, lines 6-7, Fig 4)*; and

providing service to a user in dependence on the service level data for that user *(provide the service to the user based on the level of service, Page 4, left Col. lines 14-27, Fig 4)*.

Gupta does not explicitly disclose receiving rating data from one or more users relating to data items provided to those users.

However, Rodgers discloses receiving rating data from one or more users relating to data items provided to those users *(receiving popular information, popular associates with rating, [0009], lines 6-8)*.

It would have been obvious to one skilled in the art at the time of the invention to modify

the user rating techniques of Rodgers in the data provision method of Gupta in order to provide

useful service to the users *(Rodgers, [0005], lines 5-7)*.

With respect to claim 15, data provisioning system *(frequent sharer program for peer to*

peer systems, peer to peer system associates with data provision, Page 1, Title), comprising:

i) data items or data defining access to data items for provision to users *(the account*

component keeps track of the contribute made for data provision to user, the contribute made

associates with the data items and the data defining access to the data item, Page 1, right Col.

Part II, lines 3-4);and

ii) for one or more users, respective service level data usable to determine a level of

service to be provided to the respective users *(maintain the level of service provide to the user,*

e.g. basic, enhanced, premium, Page 1, right Col. part II, lines 13-21, Fig 1 & 4);

a processor arranged in use to perform the following steps *(a processor is inherit in the*

sharer program for the peer to peer system, Page 1, left Col. Part I, lines 1-10):

i) data items or data defining access to data items from users for provision upon request

to users *(receiving contribution from the user, the contribution association with data item*

associate with access, Page 2, right Col. Part III, Accounting Component, lines 5-6); and

i) change the respective service level data for those users from which data items or data

defining access to data items were received in dependence upon received rating data relating to

those received data items or data defining access to data items *(changing the level of service from*

basic to enhanced or premium based on the pointes accumulated, the points associate with

rating, Page 2, right Col. Part III, Accounting Component, lines 6-7, Fig 4); and

ii) provide service to a user in dependence on the service level data for that user *(provide*

the service to the user based on the level of service, Page 4, left Col. lines 14-27, Fig 4).

Gupta does not explicitly disclose

a data store storing;

data receiving means arranged in use to receive;

ii) rating data from one or more users relating to data items provided to those users; and

However, Rodgers discloses a data store storing *(sever that stores, [0015])*;

data receiving means arranged in use to receive *(user's PC for user interface, [0029],*

lines 1-4);

ii) rating data from one or more users relating to data items provided to those users

(receiving popular information, popular associates with rating, [0009], lines 6-8).

It would have been obvious to one skilled in the art at the time of the invention to modify

the user rating techniques of Rodgers in the data provision system of Gupta in order to provide

useful service to the users *(Rodgers, [0005], lines 5-7).*

With respect to claim 27, Gupta discloses a data provisioning method *(frequent sharer*

program for peer to peer systems, peer to peer system associates with data provision, Page 1,

Title), comprising the steps:

storing data items or data defining access to data items for provision to users *(the account*

component keeps track of the contribute made for data provision to user, the contribute made

associates with the data items and the data defining access to the data item, Page 1, right Col.

Part II, lines 3-4);

maintaining, for one or more users, respective service level data usable to determine a

level of service to be provided to the respective users *(maintain the level of service provide to the*

user, e.g. basic, enhanced, premium, Page 1, right Col. part II, lines 13-21, Fig 1 & 4);

receiving data items or data defining access to data items from users for provision to

users *(receiving contribution from the user, the contribution association with data item associate*

with access, Page 2, right Col. Part III, Accounting Component, lines 5-6);

changing the respective service level data for those users from which data items or data

defining access to data items were received in dependence upon received rating data relating to

those received data items or data defining access to data items *(changing the level of service from*

basic to enhanced or premium based on the pointes accumulated, the points associate with

rating, Page 2, right Col. Part III, Accounting Component, lines 6-7, Fig 4); and

providing service to a user in dependence on the service level data for that user *(provide*

the service to the user based on the level of service, Page 4, left Col. lines 14-27, Fig 4),

wherein each data item or set of data defining access to a data item has a property having

a value *(data associates with the point, and the point correspond to the value, Page 1, right Col.*

Part II, lines 3-10), and the service level data comprises a content access value relating to the

property *(the service level associates with earned points, the service level corresponds to the*

access value, Page 1, right Col. Part II, lines 12-19, Fig 4), wherein the servicing step

comprises determining a sub-set of the data items or data defining access to data items in

dependence on the respective values *(the service provide associates with the data is depend on*

points collected based on the award component, Page 4, left Col, lines 14-27, Fig 4,), and

providing the sub-set to the requesting user *(data associates with the corresponding service level*

is provided to the user, Page 4, left Col., lines 14-17).

Gupta does not explicitly disclose receiving rating data from one or more users relating to

data items provided to those users.

However, Rodgers discloses receiving rating data from one or more users relating to data

items provided to those users *(receiving popular information, popular associates with rating,*

[0009], lines 6-8).

It would have been obvious to one skilled in the art at the time of the invention to modify

the user rating techniques of Rodgers in the data provision method of Gupta in order to provide

useful service to the users *(Rodgers, [0005], lines 5-7)*.

With respect to claims 2 and 16, Gupta discloses wherein the service level data comprises

a proportion value *(data associates with the point, and the point correspond to the value, Page 1,*

right Col. Part II, lines 3-10), and wherein the servicing step comprises determining a sub-set of

the data items or data defining access to data items corresponding to a proportion of the available

data items or data defining access to data items substantial corresponding to the proportion value

(the service provide associates with the data is depend on points collected based on the award

component, Page 4, left Col, lines 14-27, Fig 4,); and providing the sub-set to the requesting user

(data associates with the corresponding service level is provided to the user, Page 4, left Col.,

lines 14-17).

With respect to claims 3 and 17, Gupta discloses wherein each data item or set of data defining access to a data item has a property having a value *(data associates with the point, and the point correspond to the value, Page 1, right Col. Part II, lines 3-10)*, and the service level data comprises a content access value relating to the property *(the service level associates with earned points, the service level corresponds to the access value, Page 1, right Col. Part II, lines 12-19, Fig 4)*, wherein the servicing step comprises determining a sub-set of the data items or data defining access to data items in dependence on the respective values *(the service provide associates with the data is depend on points collected based on the award component, Page 4, left Col, lines 14-27, Fig 4,)*, and providing the sub-set to the requesting user *(data associates with the corresponding service level is provided to the user, Page 4, left Col., lines 14-17)*.

With respect to claims 4 and 18, Gupta does not explicitly disclose wherein the property values and content access values are times and/or dates.

However, Rodgers discloses wherein the property values and content access values are times and/or dates *([0052-0055])*.

It would have been obvious to one skilled in the art at the time of the invention to modify the data type techniques of Rodgers in the data provision method of Gupta in order to provide useful service to the users *(Rodgers, [0005], lines 5-7)*.

With respect to claims 5 and 19, Gupta does not explicitly disclose wherein the property values and content access values are geographical positions.

However, Rodgers discloses wherein the property values and content access values are geographical positions *(demographic data is associated with the content, [0008])*.

It would have been obvious to one skilled in the art at the time of the invention to modify the demographic collection techniques of Rodgers in the data provision method of Gupta in order to provide useful service to the users *(Rodgers, [0005], lines 5-7)*.

With respect to claims 6 and 20, Gupta discloses wherein the service level data is a transmission rate value *(peer bandwidth is associated with the point system, Page 1, right Col, Part II, lines 7-8)*, and the servicing step comprises determining a set of data items or data defining access to data items which meet the request *(the service provide associates with the data is depend on points collected based on the award component, Page 4, left Col, lines 14-27, Fig 4,)*, and providing the set to the user at a transmission rate in dependence on the transmission rate value *(data associates with the corresponding service level is provided to the user, Page 4, left Col., lines 14-17)*.

With respect to claims 7 and 21, Gupta discloses wherein the changing step further comprises receiving requests for specific data items or data defining access to data items from users *(serve hard to find or unpopular content, Page 1, right Col. Part II, lines 8-10)*, and changing the service level data for the user from which the requested data item or data defining access to data was received *(changing the level of service from basic to enhanced or premium based on the pointes accumulated, Page 2, right Col. Part III, Accounting Component, lines 6-7, Fig 2)*.

With respect to claims 8 and 22, Gupta discloses wherein the changing step further

comprises monitoring the time or date at which a first data item or data defining access to a data

item is received in relation to the time or date a second data item or data defining access to a data

item is received *(keep track of the contribution, which associate with different factors, Page 1,*

right Col. Part II, lines 5-10, Fig 2), and changing the service level data of the user from the

which first data item or data defining access to a data item was received in dependence on the

difference between the times and/or dates *(changing the level of service from basic to enhanced*

or premium based on the pointes accumulated, the points associate with different factors, Page

2, right Col. Part III, Accounting Component, lines 6-7, Fig 2).

With respect to claims 9 and 23, Gupta discloses wherein the changing step further

comprises monitoring the time since the receipt of a data item or data defining access to a data

item *(keep track of the contribution, which associate with different factors, Page 1, right Col.*

Part II, lines 5-10, Fig 2), and changing the service level data of the user from which the data

item or data defining access to the data item was received in dependence on the monitored

time*(changing the level of service from basic to enhanced or premium based on the pointes*

accumulated, the points associate with different factors, Page 2, right Col. Part III, Accounting

Component, lines 6-7, Fig 2).

With respect to claims 10 and 24, Gupta disclose the step of permitting a user to perform

manipulations of the stored content items or data defining access to content items in dependence

on the user's service level data *(user can manipulate points collection by unitizing different contribution factors, e.g. file size, type of file, Page 1, right Col. Part II, lines 5-10, Fig 2).*

With respect to claim 11, Gupta disclose collectively performed by at least a sub-set of peers within a peer to peer network *(Peer to Peer system, Page, Title).*

With respect to claims 12 and 26, Gupta disclose wherein the rating is weighted according to the service level value of the rating user *(points is weighted according to different factors associating with the user, and the points correspond to the rating, Page 1, right Col. Part II, lines 5-10).*

With respect to claim 13, Gupta does not explicitly discloses a computer program or suite of computer programs arranged such that when executed by a computer system or a plurality of computer systems it/they cause the computer system or systems to perform the method of claim 1.

However , Rodgers discloses a computer program or suite of computer programs arranged such that when executed by a computer system or a plurality of computer systems it/they cause the computer system or systems to perform the method of claim 1 *([0024], [0029], Fig 1).*

It would have been obvious to one skilled in the art at the time of the invention to modify the computer program techniques of Rodgers in the data provision method of Gupta in order to provide useful service to the users *(Rodgers, [0005], lines 5-7).*

With respect to claim 14, the claim is rejected for the same reasons as claim 13 above.

Gupta does not explicitly disclose a computer readable storage medium storing a computer

program or any one or more of a suite of computer programs according to claim 13.

However, Rodgers discloses a computer readable storage medium storing a computer

program or any one or more of a suite of computer programs according to claim 13 *([0024],*

[0029], Fig 1).

With respect to claim 25, Gupta discloses a system according to claim 14, collectively

embodied by at least a sub-set of peers within a peer to peer network *(Peer to Peer system, Page,*

Title).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to MICHELLE OWYANG whose telephone number is (571)270-

1254. The examiner can normally be reached on Monday-Friday (Alternate Fridays Off): 8am-

5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, TIM VO can be reached on 571-272-3642. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

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information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tim T. Vo/
Supervisory Patent Examiner, Art Unit
2168

MO 7/18/08